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AUTHOR Trousdale, Donna; Penuel, William R.; Khanna, Ritu
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ABSTRACT

This paper examines the different strategies used to argue for and against testing of English Language Learners (ELL) in California. The study arose from protests directed at a California law requiring that a norm-referenced achievement test be used to assess school children on their mastery of basic skills. The paper describes the different uses and definitions of equity and fairness made by various individuals and organizations and delineates the ways in which different definitions of equity were developed politically in the educational and legal domains. The historical debate over equity in education is discussed along with the current debate and the controversy stirred by the call for testing. The article focuses on a case in San Francisco in which the superintendent of the schools opposed the assessment testing, claiming that the stipulation that the testing be carried out in English only was unfair to many students for whom English was a second language. It describes the subsequent court case that arose when the superintendent sued the state to stop the testing. The case study here is used to illustrate the larger battle that is being waged throughout the U.S. regarding accountability and fair assessment. Contains 19 references. (RJM)

Arguing for Equity: The Politics of Testing English Language Learners in San Francisco

Donna Trousdale
Department of Research, Planning, and Evaluation
San Francisco Unified School District

William R. Penuel
SRI International

Ritu Khanna
Department of Research, Planning, and Evaluation
San Francisco Unified School District

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Abstract

In 1997, California passed a new state law requiring that California schoolchildren be assessed with respect to their mastery of a set of basic skills measured by a norm-referenced achievement test. The law was controversial in this regard, but more so in that it mandated for the first time that all students be tested in English, regardless of their knowledge of English. In early 1998, several districts appeared poised to directly challenge the STAR testing program, as the state initiative was called, on the grounds that it was unfair to English Language Learners to give them a test in a language they could not read because they had not yet had the opportunity to learn English. In San Francisco, Superintendent Waldemar Rojas defied the state's directives to SFUSD to comply with the law. He filed for a temporary injunction in Federal Court against the state to halt testing of English Language Learners (ELLs) who had received less than thirty months instruction in English. Rojas argued that the STAR program violated key provisions of the 14th Amendment, the "Equal Protection" clause of the United States, by denying English Language Learners the same benefits of the testing program enjoyed by other students and causing them undue harm in the process.

In this paper, we examine the different rhetorical strategies used to argue for and against testing of ELLs in California, with particular attention to the San Francisco case. Our aim is to describe the different uses and definitions of equity and fairness made by various individuals and organizations and to delineate the ways in which different definitions of equity were developed politically in the educational and legal domains over the course of the Spring. Finally, we consider the implications of this controversy for standards in assessment and for assessment-driven reform efforts across the state.

Introduction

Discourse about equity has become ubiquitous in educational reform efforts in recent years. In the public and in court, different notions of equity and fairness have been deployed and developed over the past forty years. These discourses of "equity" and "fairness" are important to understanding the current state controversy over testing of English Language Learners, because the ways of talking about equity and fairness draw from these earlier arguments. Earlier controversies define a kind of "common sense" or more accurately a set of "common arguments" (Billig, 1987) that speakers, writers, readers, and listeners may draw upon when engaged in public debate. They define not a single meaning for a particular issue, but rather a diversity of meanings (Edelman, 1988) that become part of the "toolkit" or argument resources of those familiar with the debates can deploy strategically to advance their cause (see Penuel & Law, 1996).

It is important to note, moreover, that the "common arguments" not only define a set of values about what courses of action are right and wrong but also articulate identities of characters within the debate, cast as more or less virtuous, capable, believable, and so forth. According to Edelman (1988):

> Problems come into discourse and therefore into existence as reinforcements of ideologies, not simply because they are there or because they are important for wellbeing. They signify who is virtuous and useful and who are dangerous or inadequate, which actions will be rewarded and which penalized. They constitute people as subjects with particular kinds of aspirations, self-concepts, and fears, and they create beliefs about the relative importance of events and objects. (p. 12)

In this paper, we explore the extent to which different notions of equity and fairness—borrowed from some of the United States' "common arguments" about equity in education—are deployed in the context of the debate over testing English Language Learners in English in California. We will explore not only the rhetorical strategies used throughout the testing controversy but also explore how various agents and persons are characterized in both the courts and the newspaper media. The identities formulated are themselves contested ways of representing different groups, especially English Language Learners, and the arguments for or against testing of ELLs depend crucially on how this group of students is defined throughout the debate.

The Historical Debate: A Toolkit for Contemporary Meaning-Making

Since the 1950s, the notion of "equity as inclusion" or "education for all" has been the vision for most when it comes to the structure and opportunities within the American educational system. Brown v. Board of Education (1954) demanded the removal of legally sanctioned segregation, declaring that separate schools for African Americans were inherently unequal and thus unconstitutional; the case opened the door to equal education for African Americans. At this time it was believed that many of the injustices born out of and propelled by segregated schooling and unequal access to quality educational opportunities would be curbed through integration. This would

happen both by integrating African American students into predominantly all-White schools and by providing equal resources to schools where there are large numbers of African American students. Equality, defined by *Brown* in 1954 and enforced later through the Civil Rights Act of 1964, came to be largely defined in terms of school attendance. In many cases, as in the Metropolitan Nashville Public Schools, the busing pattern was such that African American students were bused out to suburban schools, but few whites were bused to less-well funded inner city schools. The implication was that equality required access to the "mainstream," defined largely in terms of privileges that Whites enjoyed as part of a previously-segregated school system. As Tyack & Cuban (1995) write,

> At first, many of the groups seeking greater educational opportunity sought to achieve greater access to the mainstream, to share the same resources, to enjoy the equality of opportunity envisaged by the American creed, and to participate in the forms of 'progress' already enjoyed by the more favored parts of society (p.27).

However, it quickly became apparent that public schooling, despite efforts to insure equality, still "play[ed] as much of a role in magnifying differences between children from wealthy and impoverished backgrounds and between children of different ethnic backgrounds as [it did] in overcoming these differences (Slavin, 1998, p. 1)." The realization that integration only tapped the surface of the social injustices laden in public education lead many to refocus efforts around the importance of the recognition of diversity. The Coleman report underscored these differences at a time when reform proposals from low-income communities were diverging (Coleman *et al,*, 1966).

Activists began to redefine what was meant by "progress" and "access to the mainstream" was questioned as the easy road to equality. As Tyack & Cuban (1995) point out, "Hispanics said that immigrant children encountered cultural imperialism that denied their language and heritage...Perhaps some form of separatism and pluralistic definition of progress [is] needed to replace the older notion of equality as sameness. (p. 28)." Educational pundits began to put aside the need for inclusion and began instead to focus on the need to recognize and validate difference stating that "[a]ny successful reform must include careful attention to persistent and systematic differences by race/ethnicity, gender, ability, or economic status in the distribution of opportunities, conditions, practices, and outcomes in schools and industry" (Windfield & Woodard, 1994, p. 5). Researchers began to argue that educational equity could be achieved through appropriate recognition and support of cultural differences (Lucas, Henze, & Donato, 1990; LaCelle-Peterson & Rivera, 1994; Pignatelli, 1993). Multi-cultural education and the development of "identity politics" began to take hold as a promising step in the battle of inequity. Identity politics movements define equality in terms of representation and recognition, not just freedom of expression or equal opportunity (Calhoun, 1994).

Striving for equality in the public school system by way of understanding differences did not go unchallenged. Beginning in the late 1960s and continuing through the 70s, a counter-movement began to grow among those sometimes called the "Silent Majority." During this time the progress made through Brown v. Board of Education was slowly eroded away by subsequent Supreme Court rulings. In 1973 the ruling *in Milliken*

v. Bradley denied the possibility of city-suburban school desegregation. This case effectively made the goals of integration impossible by shutting off the option of drawing from heavily white suburbs in order to integrate urban districts with large minority populations (see Eaton, Feldman, & Kirby, 1996). Soon following, the court's ruling in *Regents of the University of California v. Bakke* (1978) did away with the lawfulness of special admissions programs that took ethnicity into account. Justice Powell, defending the Supreme Court's decision, argued, "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." (quoted in Bell, 1980, p. 433.) Through these two cases, the notions of equity defined by *Brown v. Board of Education* were essentially overturned. Sensitivity to difference as a remedy to inequality was becoming devalued and replaced with notions that all groups were to be treated the same.

Since then, a new discourse has emerged around equality, one defined in terms of sameness or "reciprocity" (affording the same rights for Whites and persons of color, regardless of history). There have been numerous arguments made that suggest that defining equality as difference has created a national schism:

> The recent apotheosis of ethnicity, black, brown, red, yellow, white, has revived the dismal prospect that in melting-pot days Americans thought the republic was moving safely beyond—that is, a society fragmented into separate ethnic communities. The cult of ethnicity exaggerates differences, intensifies resentments and antagonisms, drives ever deeper the awful wedges between races and nationalities. The endgame is self-pity and self-ghettoization. (Schlesinger, 1992, p. 106)

In agreement with the court's reasoning in *Bakke* (1978), Schlesinger strongly argued for a move back to the notion that an "equal" society can best be achieved by focusing on our "sameness" rather than dwelling on our differences.

We have presented only a broad sketch of the historical currents shaping discourse about equity in education in the United States here. An exhaustive treatment of this history is not possible here, nor is it our purpose. Rather, we aim to show in this paper how the problems and protagonists within these broad "sketches" or story-lines of American educational history—not the particular details of particular court cases or district—serve as structuring resources within the public policy debate over the testing of English Language learners in California.

The Current Debate: Defining the Argument Space as Standards Vs. Accountability

The story of California's current assessment-driven reform stretches back more than ten years. By the early 1990s, California had begun developing districts' capacity to support assessment driven-reform through a series of policy initiatives that culminated in the creation of the California Learning Assessment System (CLAS). Teachers were actively involved in piloting and scoring the assessments, which were aimed at measuring

students' basic and complex thinking skills through their completion of performance tasks. It was during the CLAS that the state adopted a policy to exempt students with limited proficiency in English from testing who have received less than 30 school months of English instruction. This also became the guiding procedure for the National Assessment of Educational Progress (NAEP).

A number of factors led to CLAS' demise in 1994 (see Crispeels, 1997). Seeking re-election, then-Governor Pete Wilson (R) found in CLAS a target for defining problems within education. CLAS failed to measure "the basics," and instead focused too much on students working together and solving complex problems (Kirst & Mazzeo, 1996). Also, as would become important in the revival of state testing in California, CLAS failed to provide information on how individual students performed in core subject areas such as reading and math (Kirst & Mazzeo, 1996).

In early May 1997, Governor Wilson proposed a new test for California schoolchildren. Initially, he called for an "off-the-shelf" assessment to be given to students in grades 2-11, which he wanted to be given in the spring of the following school year. His aim was to replace CLAS with an assessment system that provided classroom-level data and individual scores for students. Almost immediately, elected State Schools Superintendent Delaine Eastin, a Democrat, and several other educational leaders across the state announced their opposition to Wilson's plan.

The arguments for and against new state tests for schoolchildren were framed in terms of *accountability* and standards. Governor Wilson sought a means to measure the impact of key education initiatives, especially the state's class-size reduction plan, according to reports from the newspapers:

> Wilson said he was impatient with the lack of a way to measure student performance, particularly as the state puts in place a massive program to reduce class sizes. (San Jose *Mercury News*, 3b, May 29, 1997)

Furthermore, the new assessment system would be designed to do precisely what CLAS could not: provide individual test scores for students, with an eye toward giving teachers a classroom-level score for purposes of accountability (San Jose *Mercury News*, 5/29/97). Wilson wanted an 'off-the-shelf' test, which was immediately interpreted by others as a desire for a norm-referenced achievement test which would be a means for comparing students against one another, rather than to a fixed set of performance standards.

Opposition to Wilson's plan was almost immediate. Wilson had to defend his proposal before the group assigned with the task of developing content standards for California's schoolchildren, who's work was not yet finished.

> "In no way should this be interpreted as a retreat from what you are doing," Wilson told the Commission for the Establishment of Academic Content and Performance Standards. But, he added, "we need individualized scores, and we need them right away."" (San Jose *Mercury News*, 3B, May 29, 1997)

Elected State Schools Superintendent Delaine Eastin, a Democrat, announced her opposition to the plan because the test would in no way be aligned to new state standards.

> "To have a test before you have standards, what are you testing to?" Eastin said. "That is not moving us toward global competitiveness." (San Jose *Mercury News*, 3b, May 29, 1997)

Two weeks later, she would echo:

> "I urge you to consider carefully how a 'quick-fix' could irreparably harm the steady progress we have been making toward California's own standards...." Eastin wrote in a letter to Board of Education President Yvonne Larsen yesterday. "If we commit to a mandatory test which is not aligned to the standards adopted this fall, we will send a message to the teachers that the standards are not important." (San Francisco *Chronicle*, A1, June 12, 97)

The kind of test Wilson was interested in selecting also became a target of opponents, since norm-referenced tests are often opposed by groups espousing performance standards with fixed benchmarks to measure student progress:

> "Generally, the trend is away from these kinds of tests because they don't address the question of what little Jimmy knows," said Wayne Martin, director of testing for the Council of Chief State School Officers. "They just tell you how well Jimmy is doing in relation to Stan and Wayne and Marshall."

By the time the legislature met in the summer to debate Wilson's proposal, then, a framework for argument had been set that would endure throughout the coming year, even though other issues—including those of equity—would emerge into the forefront. The terms accountability and standards—often coupled closely together in educational reform discourse—were used by opposing sides of Wilson's testing proposal. In the end, because both terms are important parts of the public debate over education, neither side came out against accountability or standards *per se*. In fact, Wilson spoke to the issue directly. However, the publicly-stated issue dividing the two camps was the sequence of events that would need to take place before a test could be properly chosen.

Wedge Politics Returns: Wilson's English-Only Proposal

As the legislature debated its budget that summer, more controversial aspects of Wilson's plan emerged in the press and among legislators. Wilson proposed that all students be required to take this test only in English. As Assemblyman Steve Baldwin, a Republican supporter of the plan, would argue,

> If your goal is to get more kids into English fluency as soon as possible, then it doesn't make any sense to test in Spanish. Even if they score a 10, it tells the school what they are doing well or not doing well. Maybe the next year, the kid scores a 50. (Sacramento *Bee,* July 24, 1997)

The governor's press secretary echoed this perspective:

> If the children are to be integrated into the economic mainstream, they need to be more proficient in English. If they are to be compared to their peers, the test should be in English. (Sacramento *Bee,* July 24, 1997).

The two statements reflect what will become a recurring theme of Governor Wilson's arguments regarding the testing of English Language Learners. First, there is a focus on Spanish-speaking English Language Learners, even though there are many more ELLs who speak over 100 languages in California. Second, Wilson argues that the test is needed in English so as to foster the goals of including English Language Learners within the broader society, defined here as either the "economic mainstream." Entering the mainstream, moreover, is equated with English proficiency. Finally, anticipating the voices of opponents, Wilson will argue throughout this debate that even if ELLs score low, it will provide a "valid baseline" against which to measure progress toward English proficiency. (During this time, Wilson was also trying to garner support for Prop 227, a bill criticized for being anti-immigrant because it would do away with all bilingual instruction in the state.)

There was an immediate reaction against Wilson's proposal, both among legislators and the press. In an editorial published in the Sacramento *Bee,* editors wrote:

> What's the use of an English-only statewide assessment to parents and teachers of the 1.3-million limited-English-speaking public school students? To demonstrate that they don't perform well in a language they don't yet understand? (July 28, 1997)

The editors go on to write:

> Given the huge number of California students with limited English skills, what the state needs is a test that can be administered in at least two languages, preferably more. Limited-English speakers should have to take both the English test and one in their primary language, if there is a sufficient number of speakers of that language to make practical the development of a test for them. (Sacramento *Bee,* July 28, 1997).

Interestingly, while the newspaper here takes an opposing stand on the testing of ELLs in English, students are still represented as "deficient" in an important respect—in their ability to speak English. The implicit goal of ensuring that all students understand English, articulated more explicitly by Wilson is adopted, and only the test as a means for measuring that goal is challenged. The test is not "unfair" so much as it is a waste of taxpayer money: it will not yield the kind of valid baseline that Wilson is seeking to obtain, argue the editors of the *Bee.* *Bee* editors later reiterated their point, as legislative opposition to the plan escalated and threatened to hold up the entire state budget:

> Wilson's early insistence on an English-only test was as baldly political as it was bad policy. Such an assessment would give us little information about the 1.3 million limited-English-speaking students, 20 percent of the state total, other than they don't perform well in a language they don't know. (Sacramento *Bee,* August 14, 1997).

Assemblywoman Deborah Ortiz, a Democrat, argued similarly that it is

> Ludicrous to test students in English when it's not the language their learning in. It just means that some kids will be tested accurately and some others won't. (Sacramento *Bee,* August 12, 1997).

The Democratically-controlled legislature initially refused to pass Wilson's testing bill. In response, Wilson refused to sign bills funding several district-level projects of legislators,. Legislators objected, arguing that the Governor was holding the legislature "hostage" and was violating state bribery laws (Sacramento *Bee,* August 22, 1997).

Among the programs held "hostage" by Governor Wilson included funds for aid to elderly, blind, and disabled legal immigrants, prenatal care for illegal immigrants, and citizenship training classes. Wilson's justification of the cuts reflected his view that

> Legal residents and citizens should have first priority in the use of limited resources for health care. (San Francisco *Examiner,* A6, August 19, 1997).

The significance of the kinds of funds being held back was not lost on legislatures. As one news outlet speculated (Sacramento *Bee,* "Dan Walters: Hostage-taking cuts two ways", August 19, 1997), there was a clear expectation on Wilson's part that advocates of immigrant groups would trade the issue of testing in English for more funding for immigrant programs. Now the English-only testing program had been explicitly cast in terms of *immigrant* issues, not just whether one is learning how to speak English (which may be true of some students whose parents are not immigrants).

As the budget debate continued, it appeared that Wilson had agreed to a provision that students would not have to be tested in English for two years, if they were still learning English (Sacramento *Bee,* August 13, 1997). Democrats in the legislature indicated their willingness to consider their own compromise on the English-only testing issue: they would accept testing in English if students with "limited English skills" could also be tested in their primary language and also if the score reporting would not unfairly affect a teacher's reputation (San Jose *Mercury-News,* August 19, 1997, 1A). For many tests, only a version of the test in Spanish might be available for testing ELLs in their home language, posing a practical problem for those seeking to implement the law.

There was also a compromise that emerged on the reporting of results. While Wilson had wanted a classroom-by-classroom accounting of results, Democrats agreed only to make available results by individual students, grade level, school, district, and county. Democrats also won a concession from the Governor on who would select the test: State Schools Superintendent Delaine Eastin would make a recommendation to the state board, which would in turn decide which test to use.

The final bill would take over 50 days to draft. It was not signed until October 8, 1997, long after the legislative budget session was over. Its language, moreover, provided no two-year exemption for English Language Learners: all students, regardless of "how long they've been in the country" would have to take the test in English (Sacramento *Bee*, September 12, 1997). On signing the bill, Governor Wilson reiterated the purpose of the test as he saw it: to provide information for accountability:

> "Our most precious product is educated children, yet we have no quality control. This will provide the basis for comparison and accountability," Wilson said at a Capitol news conference before signing the bill. (San Francisco *Chronicle*, October 8, 1997, A16).

On this occasion, his argument focused on individual parents:

> "Over the past year, I've spent a considerable amount of time visiting classrooms, meeting with parents and hearing their concerns for their children's future," Wilson said. "Time and time again, they've described to me how uninformed they feel—that they are in the dark as to how their kids are progressing." (San Jose *Mercury News*, October 8, 1997, 1A).

Over the next month, as defined by the law, State Schools Superintendent Delaine Eastin would recommend a test to the State Board of Education, which would in turn decide which test would be administered. While Eastin recommended the Terra Nova, published by CTB/McGraw-Hill, the Board would select on November 14, its deadline for selecting the state test, the SAT-9, published by Riverside. Given the political nature of the selection process, it is not surprising that the state Board selected an alternative test. What was surprising, perhaps, was the nearly immediate response from one school district within the state, San Francisco Unified School District.

Compromise Challenged: San Francisco Attempts to Reframe the Debate

Citing arguments that were similar to those made by legislative opponents of Wilson's testing plan, Superintendent Waldemar Rojas of San Francisco declared the state's testing plan a "waste of taxpayer money" (San Francisco *Chronicle*, November 15, 1997, A23). He, along with other school district superintendents from several large urban areas had tried to urge state officials to put off selecting a test, citing the English-only provision as the reason. What the legislature had perceived as a "compromise" was now being challenged by San Francisco and other districts as unfair and inequitable.

In an editorial to the San Francisco *Chronicle*, Rojas questioned the validity of the results that would be generated from testing students before standards had been adopted, much as previous opponents had done. But Rojas also argued that the test was a poor measure of what ELLs knowledge in core subject areas such as math or science:

> If I were to go to Moscow tomorrow and take a third-grade test in Russian, I would fail. Does that mean I have not mastered third-grade academic skills? No. It means I do not know Russian. How could this distinction

> have been ignored by our political leaders? If the state wants to measure language acquisition, there are assessment tools designed for that purpose. Students and their families should not be humiliated, and taxpayers should not waste their money on a testing plan designed to fail. (San Francisco *Chronicle,* November 19, 1997).

Rojas's public rejection of testing ELL's only in English set off a debate that has yet to be resolved. In the beginning, Wilson seemed to ignore public outrage by failing to reconsider his decision. Instead he continued to argue for school vouchers and an end to social promotion. He further pronounced that his STAR testing program would be used to decide which students would be eligible to receive vouchers and which students would be held back a grade for failing the STAR test in language, math, science, or history. Many feared that ELL students would be at a further disadvantage with such important decisions being made from invalid test results.

Tensions began to escalate as the testing date approached. Superintendents from throughout California banded together to express their disdain for the STAR program, which was now being referred to in the media as "Gov. Wilson's English-only testing program." Opponents claimed that it was "illogical and illegal to test children in English when they didn't speak the language." (San Francisco *Chronicle,* February 25, 1998). Superintendent Rojas even went so far as to threaten the State with a lawsuit claiming, "We have a good legal challenge to this." (San Francisco *Chronicle*, February 25, 1998).

By March, in defiance of the State testing law, the San Francisco school board voted to exempt students from taking the STAR test who have received less than 30 months of English instruction. Superintendent Rojas cited several reasons why San Francisco would continue to defy Wilson's proposal. He claimed

> ...that giving tests in English to children who don't speak the language violates civil rights laws and will yield invalid results, damage students' academic self-confidence and waste teacher time and taxpayer dollars." (Sacramento *Bee*, March 19, 1998)

Wilson immediately rebutted by threatening to withhold close to 12 million dollars in state funding. Rojas' responded with sentiments that echoed the civil rights movement of the 60's:

> "They can threaten all they want, but they have no legal basis to withhold funding. Besides, there are laws of the state, and there are laws of morality. I would hope Gov. Wilson is also interested in laws of morality." (Sacramento *Bee*, March 19, 1998)

Caught between San Francisco's action and her duty to uphold state law, state schools chief, Delaine Eastin, who herself had publicly criticized Wilson's English-only testing, threatened to sue the Board of Education for refusing to test students who lacked English skills. In a letter to Superintendent Rojas she stated that,

> "Refusal to give the test...is simply not an option. I want to be very clear. SFUSD must rescind its present resolution." (Letter to the Superintendent, March 19, 1998)

She then encouraged the San Francisco school board to challenge the legality of the test in court but not to defy the state.

Changing the Rhetoric Again: The English-Only Testing Debate Enters the Legal Arena

It was at this point that the STAR testing debate took a critical turn. The staging for the debate had now shifted beyond the media to a legal arena. The rhetoric used to argue against the test also shifted to reflect the changed context. The "rights of all" verses the "rights of the few" became a major focus of San Francisco's argument. In so doing, the Equal Protection Clause of the Fourteenth Amendment to the Constitution was brought into the debate. On March 28, 1998 officials representing the San Francisco schools filed a federal civil rights lawsuit charging that the STAR makes a "mockery of public education." They claimed that the test,

> "...violates the equal-protection clause of the Constitution and the Equal Educational Opportunities Act of 1974. Students who speak limited English are discriminated against, singled out and treated differently because they are being tested on math, science, and social studies in a language they don't understand." (quoted in San Francisco *Examiner,* March 28, 1998)

San Francisco further argued that, "English language learners will therefore suffer an unnecessary loss of self-esteem and a lowering of their educational expectations." It would also harm students by putting irrelevant test scores in their permanent record, which they claimed is a "culturally biased procedure that will be misunderstood by teachers" who are attempting to assess the skill levels of their students. In addition, the lawsuit argued that San Francisco teachers were being denied their right to free speech because of a state board regulation which forbids them from informing parents of their option to excuse their children from taking the test. (Although the Los Angeles and San Diego school districts agreed to participate in the testing program, they sent home letters to parents informing them of their right to exempt their limited English children from testing—an act that was defined by Wilson as illegal.)

In the meantime, the State--in addition to continued threats to withhold monies from the San Francisco schools--began to argue how important full inclusion in the testing program was. In what seemed to be an attempt to address the civil rights issues brought up by San Francisco, Wilson began to adopt a rhetoric of "inclusion" claiming that his goal was to meet the needs of <u>all</u> students by testing everyone. On March 28, immediately after the lawsuit was filed, Wilson stated,

> "Every student matters, and we must make a commitment to educate and assess the progress of each one....We cannot allow California's children

> to be cheated out of educational accountability by those who seek to skirt the law." (San Francisco *Chronicle*)

He continued with this line of reasoning and also argued that the STAR test could dually function as an assessment of English language fluency. On April 2, 1998 a report in the San Francisco *Examiner* claimed the following:

> The Wilson administration believes giving the test in English is essential to figure out how well all students understand and learn English. Until the STAR test was approved, California did not have a comprehensive way to measure student achievement in any subject, let alone in English.

This reasoning was quickly flouted by assessment experts who pointed out that a test designed to assess academic skills is not a valid measure of English proficiency. Any results would be an irrelevant indicator of both academic knowledge and fluency in English, and therefore a waste of time and money.

Despite the solid reasoning of the San Francisco school board members to exempt ELL students from testing, on April 2, 1998 State Superintendent Delaine Easton filed a countersuit in Superior Court for failing to comply with state law. However, Judge David Garcia agreed with the San Francisco school board's grievances and, by May, San Francisco Unified was declared the winner of this countersuit and withdrew their federal case. On the other side, the State continued their insistence that the new testing law was designed in order to meet the needs of all children. Immediately after the judges decision, Robert Trigg, vice president of the California Board of Education, was quoted as saying, "Kids are the real losers because of the judge's order." (San Francisco *Examiner*, May 28, 1998.)

San Francisco may have won the battle, but the war was far from over. The next step was to present arguments why the results of the STAR test should not be publicized and recorded in students' permanent records. Although San Francisco refused to test their limited English students, districts throughout California did, and as results began to go out, educators were up in arms. John Sweeney, superintendent of Sacramento City Unified School District summed up the public anger by saying,

> Giving these tests was a decision made by politicians, not educators. What we're told is that the test will go home. So LEP students will get a letter at home saying, 'You're a failure.'" (The Sacramento *Bee*, June 15, 1998)

San Francisco reinstated their lawsuit, demanding that the results of STAR test be thrown out. This time, however, San Francisco was not alone. The Berkeley and Oakland districts sought to join the suit—arguing once again that testing everyone in English was a violation of immigrant children's civil rights. The rhetoric appropriated by the lawyers in the suit once again foregrounded issues of equity. Schulkind, the attorney for Oakland and Berkeley publicly stated that,

> "If those children by definition lack sufficient English skills, then testing their academic ability in English makes no sense and is discriminatory." (San Jose *Mercury News*, June 25, 1998)

Schulkind further argued,

> The release and the use of these test scores stigmatize LEP students as a group. These test scores carry the imprimatur of the State. They are state endorsed, and that sends a powerful message to the public and to the parents of these children, that they are indeed valid, reliable and accurate as the statute states that they should be. This distortion and misleading message harms the students, and it harms the parents...Many parents view this as a political plot, using the children for ulterior motive. They view it as another way to bash immigrants and Latinos. They view it as a way to further remove the use of primary language instruction from the classroom, and ultimately as a way to show that their kids are less intelligent and less worthy of an education than all other children. (Court transcript CDE v. SFUSD Governing Board (1998))

Much to the dismay of State, who called the ruling "an erroneous decision," on June 26, 1998, the San Francisco Supreme Court placed a temporary restraining order on the release of all test scores until those scores of students classified as limited English proficient could be removed. Wilson was quoted as saying that the ruling was "regrettable" and that,

> "Californians have a right to know this information without delay. Without the release of all the test scores, parents cannot see how their children are measuring up to the kids across town, taxpayers will not know if their tax dollars are being invested wisely, and the state cannot fully assess which programs are working and which are not." (Oakland Tribune, July 3, 1998)

Once again Wilson adopted a rhetoric that focused on the rights of "society as a whole" while ignoring the rights of California's vast immigrant population. However, not wanting to seem insensitive to the rights of immigrants, the lawyers for the state turned the argument presented by the school districts in their direction and went on to argue that California's LEP students had the "right" to be included, that they in fact were being discriminated against by not including their test scores with the general population.

In the end, Judge Garcia withdrew the restraining order and non-English proficient student's scores were released to the public, although the scores of ELL students were not allowed to remain in their permanent record. To add to the upset, by August, Wilson had vetoed a bill that would have exempted pupils with limited English skills from statewide achievement tests in the future. In what seemed to be a mocking of San Francisco's lawsuit which originally claimed that "students who speak limited English are discriminated against, singled out and treated differently because they are being tested...in language they don't understand," Gov. Wilson states:

> "It is inappropriate to deny one class of individual the opportunity to participate in the educational benefits of the test based solely on the individual's English language proficiency." (San Francisco Chronicle, August, 29, 1998)

Attempts to pass this bill have continued throughout the 1998-99 school year.

Implications for Equity, Accountability, and Assessment

California's controversial testing program and the plight of English Language Learners in San Francisco is indicative of a larger battle that is being waged throughout the nation regarding accountability and fair assessment. One major criticism has been that testing has inequitable effects on different stratums of the population. Many have argued that standardized, "norm-referenced" educational measures tend to be biased in favor of the economically privileged and predominantly white population and in the end do little to inform the instruction or improve the overall educational experience of those students who need the most help (Lacelle-Peterson & Rivera, 1994; Winfield & Woodard, 1994). It is widely known that patterns of low achievement on standardized assessment measures have been systematically connected to minority and low-income students in urban schools who continue to be segregated from middle class, white students from the suburbs (see Orfied & Eaton, 1996.) The schools serving these students often lack the basic resources such as quality instructional conditions, social support, available supplemental instruction, and adequate instructional materials (Lee & Ekstrom, 1987; Kozol, 1991) that build the skills and knowledge embodied in test.

This is critical in the light of school reform when assessment outcomes are used to reward and sanction both schools and individuals. For one, test scores are often used to inform instruction and give insight into student's academic abilities. As Darling-Hammond (1993) points out, "As a tool for tracking students into different courses, levels, and kinds of instructional programs, testing has been a primary means for limiting or expanding students' life choices and their avenues for demonstrating competence" (p. 8). Because of such tracking practices, students in minority schools often have restricted access to those "gatekeeping" courses such as algebra and calculus that help develop critical thinking and problem-solving skills (Oakes, 1990).

The recent educational reform strategies proposed in the national testing bill (Goals 2000: Educate America Act, 1993) do little to address any of these issues around "equity" and "diversity." In particular, students limited in their English proficiency have historically suffered from a disproportionate assignment to lower curriculum tracks and remedial and/or special education classes on the basis of inappropriate assessment (Cummins, 1984; Durán, 1989; Ortiz & Wilkinson, 1990; Wilkinson & Ortiz, 1986). To add fuel to the fire, Wilson succeeded in passing Prop 227 and California educators are now struggling with the end of bilingual education. This is troublesome given that research on language acquisition has shown that even though ELL students are quick to pick up the conversational English primarily used on the playground, it takes much more time and effort to successfully acquire the subtleties of the kind of "academic" English (Collier, 1992) needed to succeed on high stakes assessments. As districts phase out bilingual instruction, students are now receiving even less support in this regard.

Nevertheless, current reform efforts that encourage the reliance on test results for educational decision making do so with the assumption that "one size fits all." As Lacelle-Peterson & Rivera argue:

> The implicit guiding assumption appears to be that whatever curricular revisions and/or assessment innovations contribute to the success of monolingual students will also work for ELLs—that once ELLs know a little English, the new and improved assessments will fit them too.(1994, p.56)

If increasing importance is going to be placed on accountability and major educational decisions are going to be based on test scores, assessment systems must be designed to include the broad learning experience—with both linguistic and academic components (Lacelle-Peterson & Rivera, 1994).

Overall, these current arguments supporting the opposition to the mass testing of ELLs and minority students as a panacea for school reform, also helped structure the rhetorical tools available to those engaged in California's recent testing debate. Many of these same issues where raised by educators and researchers throughout the months that the English-only STAR testing was being questioned. Although issues regarding equity and fairness in testing are not new, what is interesting in the case of San Francisco is that both opponents and supporters of the STAR testing program utilized *different* notions of equity and fairness—borrowed from what could be considered "common arguments" about equity in education—to argue their points. These arguments helped serve as a defense in a debate that began as an argument between accountability verses standards but quickly turned to one involving the rights of all verses the rights of the few—a debate that has yet to be resolved.

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